Hong Leong Assurance Bhd v American Home Assurance Co, Malaysia

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO D1–22–884 OF 2003
MOHD HISHAMUDIN J
17 APRIL 2008

Civil Procedure — Adjournment — Refusal — Adjournment sought in 2008 to enable plaintiff to comply with case management directions given in 2005 — Whether adjournment ought to be granted — Whether plaintiff's suit ought to be dismissed instead

Civil Procedure — Case management — Pre-trial case management — Plaintiff's non-compliance with directions made at case management, effect of — Whether gave impression that plaintiff had little respect for High Court's case management directions and not serious in prosecuting claim — Whether adjournment ought to be granted to enable plaintiff to comply with such directions — Whether plaintiff's suit ought to be dismissed instead

On 27 April 2005, during case management, Vincent Ng J set 10–13 July 2006 for hearing of the plaintiff's suit. He further directed the plaintiff to file and serve its witness statements at least 21 days before the date of trial. The action was postponed twice at the High Court's instance. When the suit finally came up for hearing on 18 March 2008, Hishamudin J found that the plaintiff had not complied with Vincent Ng J's direction. Plaintiff's counsel requested an adjournment for the plaintiff to comply with the direction. In explaining the plaintiff's non-compliance, counsel offered the following reasons: (i) the original dates of the trial had been deferred by the court; and (ii) there were amendments to the statement of defence subsequent to the direction. The issue was whether Hishamudin J ought to dismiss the suit due to the plaintiff's non-compliance with the High Court's previous (Vincent Ng J's) case management direction.

Held, dismissing the suit under O 34 r 7 of the Rules of the High Court 1980:

(1) The action ought to be dismissed as there was clear non-compliance with the High Court's previous case management direction. The

non-compliance was of such a nature as to give the impression that the plaintiff had scant respect for the High Court's case management directions and was not serious in prosecuting its claim against the defendant. The plaintiff clearly had more than ample time to prepare the witness statements (see paras 3 & 5).

(2) The fact that the trial dates were deferred could not be a valid excuse for the non-compliance. The High Court's direction of 27 April 2005, in the absence of any subsequent direction to the contrary, had still to be complied with, regardless of the deferment. The excuse was a lame one, as conceded by counsel (see para 6).

(3) The application to amend the statement of defence was only filed by the defendant on 30 March 2007; whereas the dateline for the plaintiff to file and serve its witness statements was very much earlier than that — 21 days before 10 July 2006. If the amendments to the pleadings were really the reason for the non-compliance, it was imperative for the plaintiff's solicitors to write to the court for an extension of time, or at the very least for further case management. The fact that this was not done only showed that the amendments were not the cause for the plaintiff's non-compliance (see para 7).

(4) In the instant case, dismissal of the suit without any order as to costs, would meet the ends of justice. Although defendant's counsel did not — to the High Court's dismay — object to plaintiff counsel's request for the adjournment, it was an affront to the proper administration of justice for the High Court in 2008 to grant the plaintiff an adjournment to enable it to comply with a direction given in 2005. The courts at times have to be firm with litigants to prevent the administration of justice from falling into disrepute (see para 8).

[Bahasa Malaysia summary

Pada 27 April 2005, semasa pengurusan kes, Vincent Ng H telah menetapkan 10–13 Julai 2006 untuk perbicaraan guaman plaintif. Beliau seterusnya telah mengarahkan plaintif untuk memfailkan dan menyerahkan kenyataan-kenyataan saksinya sekurang-kurangnya 21 hari sebelum tarikh perbicaraan. Tindakan tersebut telah ditangguhkan dua kali di Mahkamah Tinggi. Apabila guaman tersebut akhirnya didengar untuk perbicaraan pada 18 Mac 2008, Hishamudin H mendapati bahawa plaintif tidak mematuhi arahan Vincent Ng H. Peguam plaintif memohon satu penangguhan untuk plaintif mematuhi arahan tersebut. Dalam menjelaskan ketidakpatuhan plaintif, peguam telah memberikan alasan-alasan berikut: (i) tarikh-tarikh asal perbicaraan telah ditunda oleh mahakmah; dan (ii) terdapat pindaan-pindaan kepada penyataan pembelaan berikutan arahan tersebut. Isunya adalah sama ada Hishamudin H patut menolak guaman tersebut

akibat ketidakpatuhan plaintif dengan arahan pengurusan kes Mahkamah Tinggi (Vincent Ng H).

Diputuskan, menolak guaman di bawah A 34 k 7 Kaedah-Kaedah Mahkamah Tinggi 1980:

(1) Tindakan tersebut patut ditolak kerana terdapat ketidakpatuhan yang jelas dengan arahan pengurusan kes sebelumnya oleh Mahkamah Tinggi. Ketidakpatuhan tersebut bersifat sedemikian sehingga memberikan andaian bahawa plaintif tidak menghormati arahan pengurusan kes Mahkamah Tinggi dan tidak serius dalam mendakwa tuntutannya terhadap defendan. Plaintif jelas mempunyai masa lebih untuk menyediakan keterangan-keterangan saksi (lihat perenggan 3 & 5).

(2) Fakta bahawa tarikh-tarikh perbicaraan telah ditunda bukan alasan sah untuk ketidakpatuhan. Arahan Mahkamah Tinggi bertarikh 27 April 2005, tanpa apa-apa arahan seterusnya yang bertentangan, masih perlu dipatuhi, tidak mengira penundaan tersebut. Alasan tersebut tidak kukuh, seperti yang diakui oleh peguam (lihat perenggan 6).

(3) Permohonan untuk meminda penyataan pembelaan hanya difailkan oleh defendan pada 30 Mac 2007, walhal tarikh akhir untuk plaintif memfailkan dan menyerahkan keterangan-keterangan saksinya adalah lebih awal — 21 hari sebelum 10 Julai 2006. Jika pindaan-pindaan kepada pliding sememangnya alasan untuk ketidakpatuhan tersebut, ia adalah amat penting untuk peguamcara plaintif menulis kepada mahkamah untuk lanjutan masa, atau sekurang-kurangnya untuk pengurusan kes selanjutnya. Hakikat bahawa ini tidak dilakukan hanya menunjukkan bahawa pindaan-pindaan tersebut bukan sebab ketidakpatuhan plaintif (lihat perenggan 7).

(4) Dalam kes ini, penolakan guaman ini tanpa apa-apa perintah berhubung kos, adalah tidak adil. Meskipun peguam defendan tidak — yang mana Mahkamah Tinggi kecewa — membantah kepada permohonan peguam plaintif untuk penangguhan, ia adalah penghinaan kepada pelaksanaan keadilan sewajarnya untuk Mahkamah Tinggi pada tahun 2008 memberikan plaintif penangguhan untuk membolehkannya mematuhi arahan yang diberikan pada tahun 2005. Mahkamah ada ketikanya hendaklah tegas dengan litigan untuk mengelakkan pelaksanaan keadilan daripada mendapat nama buruk (lihat perenggan 8).]

Notes

For cases on pre-trial case management, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 1646–1648.

For cases on refusal of adjournment, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 199–201.

Legislation referred to

Rules of the High Court 1980 O 34 r 7

Harjinder Kaur (Isharidah, Ho, Chong & Menon) for the plaintiff.
TH Liew (TH Liew & Partners) for the defendant.

Mohd Hishamudin J:

[1] On 18 March 2008, at the commencement of the trial, I dismissed the plaintiff's action. But I made no order as to costs.

[2] I shall now give my grounds for dismissing the plaintiff's suit.

[3] In my judgment, the action ought to be dismissed as there was clear non-compliance with the court's previous case management direction, the non-compliance being of such a nature as to give me the impression that the plaintiff has scant respect for the court's case management directions and was not serious in prosecuting its claim against the defendant. I shall elaborate.

[4] On 27 April 2005, the learned judge then, Vincent Ng J (as he then was), in conducting the case management, by agreement of parties, directed that the plaintiff was to file and serve their witness statements at least 21 days before the date of trial. The trial dates that were fixed then were 10–13 July 2006. The relevant part of the direction, as recorded in the minutes of the file reads:

> Mahkamah: Ke 10-13/7/06 (Bicara Penuh). Dengan persetujuan kedua-dua pihak, pihak plaintif akan menfailkan [dan menyerahkan] witness statement affidavit sekurang-kurangnya 21 hari sebelum 10/7/06. Pihak defendan melakukan sedemikian 14 hari sebelum 10/7/06. (The words in square brackets are mine.)

[5] However, at the commencement of the trial on 18 March 2008 (the trial dates were earlier postponed twice at the instance of the court to make way for pre-2000 cases), much to my dismay, this direction was not complied with — and learned counsel for the plaintiff requested for an adjournment so that the plaintiff could comply with the direction. Without the filing and service of the witness statements by the plaintiff, I was not able to proceed with the trial. I consider this non-compliance as a very serious matter. The dates of the trial were fixed a long time ago — on 27 April 2005, and this was almost three years ago! The direction in question was also given on that same day. Hence, the plaintiff had more than ample time to prepare the witness

statements. The non-compliance merely goes to show a blatant disregard for the court's direction on the part of the plaintiff and a sheer lack of interest in the proceeding.

[6] When asked to explain for the non-compliance, the first reason given by learned counsel for the plaintiff, Cik Harjinder Kaur Gill, for the non-compliance was that the original dates of the trial were deferred by the court to 7 May 2007 via the court's letter dated 24 April 2006. In my judgment, the fact that the trial dates were deferred cannot be a valid excuse for the non-compliance. The court's direction of 27 April 2005, in the absence of any subsequent direction to the contrary, must still be complied with, regardless of the deferment. Indeed, counsel knew that this excuse was a lame one. For, at the commencement of the trial, when subsequently questioned further by me, learned counsel conceded that the deferment of the trial dates by the court was not a valid excuse for the non-compliance. This concession by counsel is recorded in the notes of the proceeding as follows:

Peguam Plaintif:

> The last directions were given on 27-4-2008 where parties were directed to file and to serve witness statements. Plaintiff was to file and serve at least 21 days before 10-7-2006. Defendant was to serve at least 14 days before 10-7-2006. Plaintiff has not done so. Because in April 2006 there was a letter dated b24-4-2006 informing parties that the hearing was adjourned to 7-5-2007 (till 10-5-2007) to make way for a pre-2000 case. On 14-4-2007 there was another letter from Court adjourning the trial to 17-20 March 2008.

Judge:

> The adjournments are immaterial. The directions of 27-4-2005 still need to be complied with?

Peguam Plaintif:

> Yes.

[7] The other explanation given by learned counsel for the plaintiff for the non-compliance was that there were amendments to the statement of defence subsequent to the direction. With respect, this could not have been the reason for the non-compliance. This is because the application to amend the statement of defence by the defence was only filed by the defence on 30 March 2007; whereas the dateline for the plaintiff to file and serve their witness statement was way much earlier than that, that is, 21 days before 10 July 2006. In any case, if the amendments to the pleadings were really the reason for the non-compliance, it was imperative for the plaintiff's solicitors to write to the court for an extension of time, or at the very least for further

case management. But this was not done. The fact that none of these courses of action was taken by the plaintiff's solicitors only goes to show that the amendments were not the cause for the non-compliance. The true reason was sheer poor attitude towards the whole proceeding and towards respecting the court's directions on the part of the plaintiff and their solicitors.

[8] In dismissing the plaintiff's action for non-compliance, I had invoked O 34 r 7 of the Rules of the High Court 1980. Considering the circumstances of the case, I am of the view that by dismissing the suit — but making no order as to costs — would meet the ends of justice. It is true that in the present case counsel for the defendant (also to my dismay) did not object when counsel for the plaintiff sought an adjournment so that the plaintiff could comply with the court's direction of 27 April 2005. But then, on the other hand, it is highly pertinent to observe that the case was registered in 2003, and yet five years later in 2008 the court, due to a serious default on the part of the plaintiff, is not able to proceed with the trial. I think it is ridiculous and an affront to the proper administration of justice for the court to grant the plaintiff the adjournment sought so that the plaintiff could comply with a direction given three years ago in 2005! There are times when courts have to be firm with litigants in order to prevent the administration of justice from falling into disrepute.

Suit dismissed under O 34 k 7 of the Rules of the High Court 1980.

Reported by Andrew Christopher Simon